

HIPAA - Privacy – Personal Representatives

TRICARE Management Activity, Electronic Business Policy & Standards

January 2003

OSD(HA), TMA eBPS

Highlights

- ◆ General Requirement
- ◆ Unemancipated Minors and Personal Representatives
- ◆ Limitations of Personal Representatives

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HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

General Requirement

Under the Privacy Rule, a personal representative is any person who has the legal capacity to act on the individual's behalf in making health care-related decisions when the individual does not have the capacity to do so. Under the Privacy Rule, the MTF must generally treat the individual's personal representative as the individual, regardless of whether the personal representative is acting on the behalf of an adult, an emancipated minor, or a deceased individual. In some situations; however, the MTF is not required to treat the personal representative as the individual, such as:

- ◆ If the MTF has a reasonable belief that the individual may have been or may be subject to domestic violence, abuse, or neglect by the personal representative
- ◆ Treating the personal representative as the individual could in some way endanger the individual, or
- ◆ The MTF believes, in its professional judgment, that it is not in the best interest of the individual to treat the personal representative as the individual.

There are also instances in which the personal representative may obtain access on the individual's behalf where access by the individual has been denied. One example of this is within correctional institutions. Under the Rule, the correctional institution is not required to release protected health information (PHI) to the inmate; however, the Personal Representative of the inmate may be granted access to the information.

Unemancipated Minors and Personal Representatives

Generally, a parent, guardian, or other person acting in *loco parentis* has the authority to make health care decisions on behalf of the minor child. The MTF is permitted to disclose PHI to the personal representative provided that State or other case law permits the MTF to do so. However, the parent or guardian should *not* be treated as the personal representative in the following situations:

- ◆ The minor consents to the health care service, no other consent is required by law AND the minor has not requested that the parent, guardian, or other person be treated as the personal representative;
- ◆ It is not necessary for the minor to obtain the consent of the parent, guardian, or other person for the health care treatment AND the minor, a court, or another person authorized by law consents to the treatment;
- ◆ The parent, guardian, or other person acting in *loco parentis* concurs with a confidentiality agreement between the minor and the health care provider.

For more information on this subject, refer to the Fact Sheet "Parents and Minors."



Limitations of Personal Representatives

When an individual appoints a personal representative, the individual may choose to limit the authority the personal representative maintains over the individual's health care. For example, an individual may authorize the personal representative to make health care decisions only in the event that the individual becomes incapacitated. Or, the individual may authorize the personal representative to make all health care decisions with the exception of a specific health condition, i.e. cancer.

When the MTF discloses information to a Personal Representative, the limitations of the personal representative's role, if any, must be considered prior to the disclosure.